

ASSEMBLY BILL NO. 3590
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3590 (First Reprint) with my recommendations for reconsideration.

In May of last year, I unveiled a comprehensive reform agenda, the property tax reform toolkit, aimed at empowering local elected officials to rein in local property taxes. The toolkit is designed to address the biggest cost drivers for local governments by reforming public sector collective bargaining procedures, modifying employee pensions and benefits, eliminating unfunded mandates and, importantly, providing comprehensive reform of New Jersey's outdated civil service system.

This bill represents tepid, ineffective and meaningless change. Even the Local Unit Alignment, Reorganization and Consolidation Commission (LUARCC), often lauded by Legislative leadership, demeans the effect that this bill would have on encouraging shared services and reducing costs. I proposed real reform which would give local officials another tool to constrain property taxes. The Legislature has sent me special interest approved "reform" that will do nothing to constrain property taxes. The time for real reform of civil service is overdue. I cannot and will not sign this bill in this form.

Specifically, the bill alters the current procedures for testing, classification, appointment, selection and layoffs and makes certain matters that are currently covered by civil service laws subject to collective negotiations. The bill also establishes a task force to abolish civil service titles and

revises certain practices of the State Civil Service Commission (the Commission).

Unfortunately, Assembly Bill No. 3590 fails to deliver true reform and, if approved in its current form, would not produce meaningful cost-savings or increased operational efficiencies for local governmental entities. While the bill does contain some worthwhile reforms such as extending the working test period, providing for 9 month seasonal appointments and making terminal leave payments optional under certain circumstances, the legislation fails to deliver the fundamental civil service reform provided in the toolkit, most notably on opt-out and temporary layoffs (commonly referred to as furloughs). Moreover, the bill contains a number of provisions that would have an adverse impact on a local governmental unit's position in collective negotiations and on the ability of the Commission to administer the civil service system for local units in an efficient manner.

As noted above, Assembly Bill No. 3590 does not include a provision that would enable towns, counties and school districts to opt-out of the civil service system. Under current law, local governments may choose to participate in the civil service system through the adoption of a referendum, but there is no mechanism for them to rescind that adoption. Thus, many local governmental units are stuck in a system that they adopted decades ago and have no power to withdraw from the system even if they find their continued participation in civil service to be unnecessarily burdensome and costly. As such, I am conditionally vetoing this bill to include a provision authorizing local units to rescind the adoption of civil service by public referendum. However, to ensure that former civil

service jurisdictions maintain fair and equitable employment practices, this conditional veto would require local units that opt out of civil service to adopt a personnel policy that establishes appropriate employment protections and parameters.

Moreover, this legislation fails to provide local officials with the tools they need to implement shared services arrangements. In fact, a December 21, 2010 letter from LUARCC to the Governor and Legislative Leadership indicates that civil service seniority rules are among the most significant barriers to shared services between local units. While the toolkit contains separate legislation (A-2956/S-2011), not acted upon, that would specifically eliminate these barriers, the bill before me fails to include the single most effective way to remove the civil service barriers to shared services. Without question, civil service opt out as provided in my recommendations for this legislation would be the most comprehensive way to address the barriers to shared services posed by civil service seniority rules as it would provide local communities with the ability to rescind all of the provisions of Title 11A, including civil service seniority.

In addition to failing to address civil service opt out and alternatively proposing an unworkable system of civil service related collective negotiations, Assembly Bill No. 3590 does not address the issue of temporary layoffs in a comprehensive and useful manner. Temporary layoffs are an essential tool for local governments to stabilize their budgets and prevent significant permanent layoffs. Section 7 of the bill purports to reform the law in this area by permitting employers and employees to negotiate over temporary layoffs in order to avert permanent layoffs. It should be noted that the Employer-

Employee Relations Act already permits negotiations over temporary layoffs. What local governments need, however, is the ability to unilaterally institute temporary layoffs so that more senior union representatives are not empowered to force permanent layoffs by failing to agree to a temporary layoff plan that would save jobs. Accordingly, this conditional veto authorizes local officials to institute unilateral temporary layoffs in a fair and equitable manner.

I am also recommending through this conditional veto various other modifications to Assembly Bill No. 3590 to fix or eliminate additional problematic provisions. For instance, I am striking the provision that requires the Commission to post every layoff plan that it receives on its website because these are deliberative documents that often include confidential employee information. I am also revising the bill's provision that requires collective negotiations and binding arbitration over disciplinary review procedures and disciplinary actions to make such negotiations permissive rather than mandatory.

Finally, Assembly Bill No. 3590 creates a Civil Service Title Reduction Task Force, which is charged with developing a list of titles that are to be consolidated or abolished within 90 days of its organization. While I support the consolidation of civil service titles and the streamlining of the appointment process, I oppose the creation of a new bureaucratic agency for these purposes. Under existing law, the Civil Service Commission has the unilateral power to reduce and consolidate titles. In fact, the Commission has already embarked on the consolidation process and has eliminated approximately 1,000 titles since I took office. Thus, the Civil Service Title Reduction Task Force established by this bill will only operate

to slow down and hinder the Commission's ongoing efforts, which are already authorized by law. As such, I am recommending the elimination of these provisions in their entirety.

Regrettably, Assembly Bill No. 3590 fails to deliver the comprehensive civil service reform that local governmental officials need and the citizens of New Jersey deserve. Instead of establishing a mechanism that allows local taxpayers to decide for themselves whether they want their town or county to continue to operate in the civil service system, this legislation establishes a complicated system of collective negotiations over matters that are currently managerial prerogatives. Likewise, instead of providing local officials with the tools to utilize temporary layoffs in an effective manner, the bill simply expands the negotiations process and elevates the interests of public employee unions over the interests of taxpayers.

Accordingly, I herewith return Assembly Bill No. 3590 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 11:</u>	After " <u>continual basis</u> " insert " <u>where</u> <u>practicable,</u> "
<u>Page 3, Section 2, Line 43-44:</u>	After " <u>payment</u> " delete " <u>by credit or debit</u> <u>card</u> "
<u>Page 3, Line 48:</u>	Delete Section 3 in its entirety
<u>Page 4, Line 13:</u>	Delete Section 4 in its entirety
<u>Page 4, Line 44:</u>	Renumber Section 5 as Section 3
<u>Page 5, Line 17:</u>	After " <u>for</u> " insert " <u>a</u> <u>maximum of nine months</u> <u>where the appointing</u> <u>authority has submitted</u> <u>the applicable list of</u> <u>seasonal titles to the</u> <u>Chair of the Commission</u> <u>and the Chair has</u> <u>approved them.</u> " and delete " <u>a</u> <u>period</u>

	<u>aggregating not more than nine months in a".</u>
<u>Page 5, Lines 18-28:</u>	Delete lines 18-28 in their entirety
<u>Page 5, Line 41:</u>	Renumber Section 6 as Section 4
<u>Page 6, Line 23:</u>	Renumber Section 7 as Section 5
<u>Page 8, Line 28:</u>	After "rights." insert <u>"An employee shall be removed from the special reemployment list when the employee has turned down a reemployment opportunity in a position that is one with the same or substantially similar job duties as, the same title and series as, the same or substantially similar hours of work as, and a location within a twenty-five mile radius of, the position from which the employee was laid off or demoted in lieu of layoff."</u>
<u>Page 8, Lines 33-48:</u>	Delete lines 33-48 in their entirety
<u>Page 9, Lines 1-6:</u>	Delete lines 1-6 in their entirety
<u>Page 9, Line 8:</u>	Delete Section 8 in its entirety
<u>Page 9, Line 32:</u>	Renumber Section 9 as Section 6
<u>Page 10, Line 8:</u>	After " <u>employees</u> " delete " <u>shall</u> " and insert " <u>may</u> "
<u>Page 10, Line 20:</u>	After " <u>taken.</u> " delete " <u>If the parties are unable to reach agreement after</u> "
<u>Page 10, Lines 21-24:</u>	Delete lines 21-24 in their entirety
<u>Page 10, Line 39:</u>	Renumber Section 10 as Section 7
<u>Page 11, Line 19:</u>	After " <u>employees</u> " delete " <u>shall</u> " and insert " <u>may</u> "
<u>Page 11, Line 32:</u>	After " <u>action.</u> " delete " <u>If the parties are unable to reach agreement after</u> "

Page 11, Lines 33-37:

Delete lines 33-37 in their entirety

Page 11, Line 39:

Delete Section 11 in its entirety

Page 14, Line 32:

Renumber Section 12 as Section 8

Page 16, Line 41:

Delete Section 13 in its entirety and replace it to read as follows, "9. (New Section) a. An appointing authority in State or local service may institute a temporary layoff for economy, efficiency, or other related reasons. A temporary layoff shall be defined as: (1) the closure of an entire layoff unit for one or more work days over a defined period; or (2) a staggered layoff of each employee in a layoff unit for one or more work days over a defined period. A temporary layoff shall be considered a single layoff action even though the layoff of individual employees takes place on different days during the defined period. The defined period shall be set forth by the appointing authority in its temporary layoff plan; however, in a staggered layoff, the maximum period to stagger one day off shall not exceed 45 days.

b. A temporary layoff may, with the approval of the chairperson, be subject to limited exceptions when necessary to ensure continued public health and safety, including but not limited to child welfare, law enforcement, and care for prisoners, patients, and other residents in the care or custody of the State or local government.

c. In a temporary layoff, no employee in the layoff unit, whether career, senior executive, or unclassified, shall be paid for any work day that is designated as a temporary layoff day. Any employee who is designated as exempt from a temporary layoff day pursuant to subsection b. of this section shall be paid the employee's regular wages for working on that day.

d. A temporary layoff plan shall be submitted to the chairperson at least 15 days prior to the issuance of temporary layoff notices, or such other period as permitted by the chairperson. The temporary layoff plan shall describe the implementation of the temporary layoff, including the specific day or days on which the layoff unit will be closed, any exceptions pursuant to subsection b. of this section, and, if staggered, the reasons for not closing the entire layoff unit on a specific day, and the staffing plan for implementing a staggered temporary layoff. Part-time employees shall be designated for a proportional amount of temporary layoff time, consistent with the ratio of hours worked to full-time employment. In a staggered temporary layoff, the appointing authority shall be permitted, in its sole discretion, to designate as unpaid temporary layoff time any planned or unplanned leave time taken by an employee during the defined layoff period, up to the maximum temporary layoff time for that defined layoff period. Employees shall not be

permitted to substitute any paid leave for an unpaid temporary layoff day.

e. For purposes of accrual of leave time, anniversary dates, paid holidays, and seniority, temporary layoff time shall be treated as if the employee is in pay status. An employee serving a working test period shall have the working test period extended for the time equal to the temporary layoff time. A leave under the federal Family and Medical Leave Act or other leave for medical or family reasons shall not be affected by a temporary layoff. An alternate work week program may be suspended for pay periods in which a temporary layoff is implemented.

f. Because a temporary layoff is intended to apply equally to all employees in the layoff unit subject only to the exception and staggered schedules set forth in this section, subsections b. (seniority), d. (job location), e. (lateral and demotional title rights), f. (application of lateral and demotional title rights within job locations), g. (exercise of lateral and demotional title rights), and h. (special reemployment rights) of N.J.S.11A:8-1 shall not be applicable to a temporary layoff."

Page 18, Line 7:

Delete Section 14 in its entirety and replace it to read as follows, "10. N.J.S. 34:13A-5.3 is amended to read as follows:
34:13A-5.3. Employee organizations; right to form or join; collective negotiations; grievance procedures

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due

regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employees who signs it.

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority

representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. In the case of temporary layoffs, designated representatives of the public employer shall consult with the majority representative of public employees over such temporary layoffs.

Failure to reach an agreement shall not prohibit the public employer, regardless of whether the public employer is subject to the provisions of Title 11A of the New Jersey Statutes, from instituting temporary layoffs as set forth in section 9. of P.L. c. (pending before the Legislature as this bill) and the imposition of temporary layoffs shall not constitute a violation of this act. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided

herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:1-10, the grievance and disciplinary review procedures established

by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration."

Page 18, Line 32:

Delete Section 15 in its entirety and replace it to read as follows, "11. (New Section) a. A county, municipality or school district operating under the provisions of Title 11A of the New Jersey Statutes may rescind the adoption of the provisions of Title 11A of the New Jersey Statutes upon the clerk of the county or municipality submitting the question of rescinding the provisions of Title 11A of the New Jersey Statutes to the voters of the county or municipality upon the filing of a petition with the clerk requesting the rescission. The petition shall be signed by the registered voters

of the county or municipality equal in number to at least 15% of the valid votes cast in the county or municipality at the last preceding general election. Each name shall be printed and signed and the place of residence indicated by street and number or other description sufficient to identify the place. At the bottom of each separate page of the petition, there shall be printed an affidavit, which shall be signed by the circulator of that page that the circulator, and only the circulator, personally circulated the page, that all signatures to the petition appearing on that page were made in the circulator's presence, and that the circulator believes them to be genuine signatures of the persons whose names they purport to be. If a rescission petition is presented to a prospective petitioner by a part print advertisement, paid mailing, or paid solicitor, the petition and any appeal for the signature of such a prospective signer shall disclose prominently (1) the identity of the person paying for the printed or personal solicitation, and (2) that the solicitor is paid.

b. Within 10 days from the date of filing the petition, the clerk shall, in conjunction with and with the cooperation of the commissioner of registration of the appropriate county, complete an examination and ascertain whether or not the petition is signed by the requisite number of qualified voters, shall attach to the petition a

certificate showing the result of the examination, and, in the case of a municipal clerk, shall transmit to the county clerk a notice that the question of rescission has been qualified for submission to the voters, including with that notice a copy of the certificate. The question shall be submitted at the next general election, or alternatively in the case of a municipality in which municipal elections are held the next municipal election, occurring on or after the 60th day following the date on which the clerk shall have issued the certificate. The municipal or county clerk, as appropriate, shall cause the question to be printed upon the ballots to be used at the election.

c. The clerk shall, prior to an election at which the question of rescinding the adoption of the provisions of Title 11A of the New Jersey Statutes is to be submitted to the voters, give public notice of that submission. Public notice shall include, but need not be limited to, publication in the county's or municipality's official newspaper once a week for at least four weeks and posting of the notice in five of the most public places in the county or municipality for at least four weeks before the election.

d. If the clerk refuses or neglects to comply with this act, a registered voter of the county or municipality may apply to a judge of the Superior Court in the county in which the political subdivision is located for an order

directing and compelling the submission of the question involved in the petition. The judge shall hear the matter summarily. If the judge finds and determines that the petition is in accordance with law, an appropriate order shall be issued. Any clerk failing to comply with the order of the court, or any public official, officer, agent or employee, interfering with, or preventing, a clerk from satisfying an order, shall be guilty of a crime of the fourth degree.

e. If the result of the election is favorable to rescinding the adoption of Title 11A of the New Jersey Statutes, the result shall be certified by the governing body of the county, municipality or school district to the chairperson of the Civil Service Commission. The rescission shall take effect on a date established by the chairperson no less than six months and no greater than one year following the election at which the rescission was approved. If a majority of the votes cast at the election are against rescission, no new election may be held on the same question before the second general election or municipal election, as appropriate, following the election at which that rejection of rescission was voted.

f. A fire district or districts within a municipality that has rescinded Title 11A of the New Jersey Statutes shall be deemed to have rescinded Title 11A of the New Jersey Statutes with respect to its employees."

Page 18, Line 37:

Delete Section 16 in its entirety and replace it to read as follows, "12. (New Section) a. The Civil Service Commission shall promulgate regulations providing for the orderly transition, in any county, municipality, fire district, or school district which has adopted the rescission, in the personnel system of the county, municipality, fire district, or school district. Such regulations shall provide that any county, municipality, fire district or school district which has adopted the rescission shall submit to the Chairperson of the Civil Service Commission for approval its ordinance, resolution or manual setting forth personnel policies and procedures to be followed and adhered to after the rescission of the provisions of Title 11A of the New Jersey Statutes. Such policies and procedures shall, at a minimum, provide for the terms and conditions of employment not otherwise covered by a collective negotiations agreement such as appointment, promotion, leave, employee performance, discipline and other related areas. Such policies and procedures shall also prohibit all forms of unlawful discrimination, shall include an anti-discrimination policy and a policy concerning local government ethics.

b. A county, municipality, or school district which rescinds the adoption of the provisions of Title 11A of the New Jersey Statutes shall not be permitted to readopt the provisions of that title for a period of at least 10 years from the

effective date of the rescission and shall be permitted to readopt the provisions of Title 11A of the New Jersey Statutes only once.

c. An employee with permanent status in a title on the date the rescission of Title 11A of the New Jersey Statutes takes effect shall retain only those rights to a Civil Service Commission hearing available to career service employees upon disciplinary removal from government services pursuant to N.J.S.11A:2-13 et seq., or to challenge the good faith of a layoff pursuant to N.J.S.11A:8-4.

d. Following the rescission of Title 11A of the New Jersey Statutes, the county, municipality, fire district, or school district may enter into a contract with the Civil Service Commission, in an amount which shall not exceed that permitted by law, for testing, classification, compensation, or other technical personnel services."

Page 18, Line 45:

Insert new Section 13 as follows, "13. N.J.S.11A:9-6 is amended to read as follows: 11A:9-6. Adoption of title; elections. The [method of submitting the question of] procedure for the adoption, rejection or rescission of this title [to] by the voters of a county or municipality shall conform as nearly as possible to the provisions of Title 19 of the Revised Statutes, if appropriate, relating to the submission of public questions and [when submitted] at a school district

election, shall conform as nearly as possible to the provisions of Title 18A of the New Jersey Statutes, if appropriate, relating to the submission of public questions in school districts."

Page 18, Line 46:

Renumber Section 17 as Section 14 After "sections 1" delete ",,".

Page 18, Line 47:

Delete "2, and 3 shall take effect 90" and insert "and 2 shall take effect 180"

Page 19, Line 2:

Delete "through 3" and insert "and 2".

Respectfully,

Chris Christie
Governor

Attest:

Jeffrey S. Chiesa
Chief Counsel to the Governor